

IN THE CLAIMS

Please amend Claim 21 as follows:

21. (Currently amended) A foaming composition for providing a cover layer comprising:

(a) a foaming agent,

(b) a bulking material comprising a clay-mineral, the clay being water absorbent, and the clay comprising crystalline, finely divided earthy particles having a particle size within the range of 60 to 325 mesh, and

(c) a water soluble polymer,

the composition when mixed with an aqueous carrier forming a foamed sprayable aqueous slurry suitable for providing a cover layer over a selected material.

22. (Original) The composition defined in Claim 21 additionally comprising a fibrous material.

REMARKS

This amendment is submitted in response to the Office Action mailed April 24, 2003. Favorable reconsideration of the application, as amended, is respectfully requested.

Claim 21 has been amended to reinsert the words "bulking material". These words were present in the original claim, and therefore it is submitted that the amendment should be entered because it raises no new issues of patentability. The claim has also been amended to delete the word "mineral" after "clay" to be consistent with the description in the specification; this amendment also raises no new issues of patentability.

Claims 21-22 were rejected under 35 U.S.C. 102(e) as being anticipated by Chao (5,110,839) and Chao et al. (5,109,030), each taken individually. These patents disclose foamed cementitious compositions containing a hydraulic substance and a polymeric foam stabilizer. The compositions can optionally contain fibers such as ceramic fibers, glass fibers, metallic fibers, mineral fibers, and other natural or synthetic fibers. In the office action, the Examiner stated that the teaching of "ceramic fibers" is sufficient in completing anticipation of applicants' claims as they now stand. Applicants respectfully submit that the claims are neither anticipated by nor obvious over the cited patents.

Claim 21 has been amended to state that the clay is water absorbent. Ceramic fibers such as disclosed in the Chao patents are not significantly water absorbent because they are hard and glassy.

Claim 21 has also been amended to state that the clay comprises crystalline, finely divided earthy particles having a particle size within the range of 60 to 325 mesh. The ceramic fibers disclosed in the Chao patents are continuous fibers. They are not finely divided particles, and they would not have the claimed particle size.

The rules of claim construction prevent the term "clay" in claim 21 from being interpreted to include ceramic fibers. Claim 22 recites the composition defined in claim 21 additionally comprising a fibrous material. It would not make sense to state that the clay in claim 21 comprises ceramic fibers, and that the composition additionally comprises fibers.

For all these reasons, it is respectfully submitted that claims 21 and 22 are novel and nonobvious over the Chao patents.